IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1971

No.

ALAN R. MARKS,
Petitioner

vs.

THE DEMOCRATIC PARTY OF THE UNITED STATES,
THE REPUBLICAN PARTY OF THE UNITED STATES,
THE DEMOCRATIC NATIONAL COMMITTEE,
THE REPUBLICAN NATIONAL COMMITTEE,
STEPHEN REINHARDT, CARMAN WARSCHAW,
CHARLES MANATT, THOMAS C. REED, ELINORE
RING, PUTNAM LIVERMORE, and DOES I through X,
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the final order of dismissal by the United States District Court for the Northern District of California, entered in the above case on August 25, 1971, appeal from which order is presently pending in the United States Court of Appeals for the Ninth Circuit. Because of the imminence of Presidential nominations by the Democratic and Republican party conventions in

the Summer of 1972, and the consequent short time before said nominations for the time-consuming institution and/or change of primary-election machinery by such states as may choose, under any final outcome of this action, to so institute or change such machinery, this case is of such imperative public importance as to justify the deviation from normal appellate processes, and to require immediate settlement in this Court.

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of California (C 71-1139 LHB) is not reported. The opinion of the United States Court of Appeals for the Ninth Circuit (71-2483) has not been rendered as of the date of the Petition (see above).

JURISDICTION

The final order of the United States District Court for the Northern District of California, having been made on August 20, 1971, and entered on August 25, 1971, and appeal docketed in the United States Court of Appeals for the Ninth Circuit on September 21, 1971, the jurisdiction of this court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

I

Whether the complaint states a claim or cause of action. More specifically, whether under the holding of this Court in Smith v. Allwright (64 S. Ct. 757, 321 U.S. 649), it is permissible under the 14th and 5th Amendments to the United States Constitution, for either of the two major political parties to render the votes of certain State and United States citizens, in the choice of its nominee for the Office of President of the United States, less effective than the votes of certain other such citizens.

II

Whether the issue in I above as stated in the complaint, is such as may be held to be outside the subject matter jurisdiction of the District Court under the provisions of Title 28 U.S.C. Sections 1343 (3) and/or 1343 (4).

III

Whether the issue in I above, as stated in the complaint, and for purposes of that relief therein sought, may be held to be such as to make (under Rule 19, Title 28 U.S.C.) any party unnamed in said complaint, indispensable, particularly when no order has been issued for joinder of or even designating any specific indispensable party.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The case involves the following.

United States Constitution, Amendment XIV, Section 1, (Equal Protection of the Laws Clause): ". . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Amendment V, (Due Process of Law Clause): "No person shall be . . . deprived of life, liberty, or property, without due process of law;".

The statute under which the U. S. District Court has jurisdiction of the causes of action as alleged in counts one and two of the complaint, Title 28 U.S.C. Section 1343 (3), reads in pertinent part as follows. "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . . To redress the deprivation, under color of any State law, statute, . . . custom or usage, of any right, privilege or immunity secured by the Constitution of the United States. . . ."

The statute under which the U. S. District Court has jurisdiction of the causes of action as alleged in counts three and four of the complaint, Title 28 U.S.C. Section 1343 (4), reads in pertinent part as follows. "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . . To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

The statute creating a specific cause of action

under circumstances alleged in counts three and four of the complaint, Title 42 U.S.C. Section 1985 (3), reads in pertinent part as follows. "If two or more persons . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws . . . if one or more persons engaged [in such conspiracy] do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action . . . against any one or more of the conspirators."

The Federal Rule of Court describing remedies where it is contended that there exist necessary or indispensable parties, Title 28 U.S.C. Rule 19, reads in pertinent part as follows. "A person . . . shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistant obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. . . ." (emphasis supplied)

STATEMENT OF THE CASE

This is a civil voting-rights case, involving the one-man-one-vote principle as grounded both

in the Equal Protection Clause of the 14th Amendment to the Constitution, and also in the Due Process Clause of the 5th Amendment to the Constitution, and here applied as a standard under which arises this challenge to the process by which the two powerful political parties each choose a Presidential candidate for the American People by unbridled "convention-choice", the majority of delegates to which convention are (because only a few states have even a delegate-choosing "presidential" primary) chosen by party "machinery".

Pursuant to the above, the plaintiff filed a complaint with four counts, each representing a separate and independent cause-of-action theory. The court, upon motion by certain defendants, and without ordering any other parties to be joined, issued an order dismissing the action as to all defendants on the three grounds therein stated, to wit, essentially: (1) the complaint in the action does not state a claim or cause of action; (2) such cause of action as is indeed stated in said complaint is not within the subject matter jurisdiction of the court; and, although no order issued for joinder of, or even designating any specific indispensable party, nevertheless (3) such cause of action as is stated in said complaint and for purposes of relief therein sought, is such as to make (under Rule 19, Title 28 U.S.C.) certain unspecified parties indispensable. These will be recognized as the three issues herein as set out above under Questions Presented for Review.

The basis for jurisdiction in the court of first instance, for each of the causes of action as alleged under the four separate alternate theories, one in each of four counts, is as follows, respectively.

Counts One and Two: Title 28 U.S.C. Section 1343 (3).

Counts Three and Four: Title 28 U.S.C. Section 1343 (4) as applying to that Act of Congress codified partially under Title 42 U.S.C. Section 1985 (3).

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The District Court in this case has decided a federal question in a way such as is in conflict with applicable decisions of this court.

This Court has held (Smith v. Allwright, 64 S. Ct. 757, 321 U.S. 649) that actions of a major political party in rendering the votes of certain State and United States citizens less effective than the votes of certain other such citizens in the choice of party nominees for public office, was (1) state action for purposes of application of the relevant Constitutional provisions; (2) a denial of the right of equal protection of the laws under those Constitutional provisions; and (3) therefore, proscribed to such a major political party under said Constitutional provisions.

In the instant case the two major political party defendants have rendered, and threaten to continue rendering, the votes of certain California and United States citizens, in the choice of respective party nominees for the public office of President of the United States, less effective than the votes of certain other such citizens (designated "delegates to the national convention"). Under the above-cited holding of this Court, said action should be held to be prohibited; the order of dismissal by the District Court represents a contrary holding in this case.

The basic issue here is central to the recently much-maligned practice in the United States, of the representative form of government under the Consitution. There is involved the timely urgent questions of distance of the Government from, and responsiveness to the people of the United States. Also involved are the highly inflammable issues surrounding the last Chicago political convention. Involved, too, are the as-yet-unenflamed issues of the imminent Democratic and Republican national conventions scheduled for this summer, as well as of those to be held repeatedly, far in the future.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

Alan R. Marks, Petitioner

(Appendices Follow)

Appendices.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALAN R. MARKS,

PLAINTIFF,

vs.

THE DEMOCRATIC PARTY OF THE UNITED STATES, THE REPUBLICAN PARTY OF THE UNITED STATES, THE DEMOCRATIC NATIONAL COMMITTEE, THE REPUBLICAN NATIONAL COMMITTEE, STEPHEN REINHARDT, CARMAN WARSCHAW, CHARLES MANATT, THOMAS C. REED, ELINORE RING, PUTNAM LIVERMORE, and DOES I through X,

DEFENDANTS.

No. C-71-1139 LHB

COMPLAINT

COUNTS ONE and TWO under Title 28 U.S.C. Section 1343 (3).

and

COUNTS THREE and FOUR under Title 28 U.S.C. Section 1343 (4), as applying to an Act of Congress codified partially under Title 42 U.S.C. Section 1985 (3).

COUNT ONE

Plaintiff alleges:

I

That political party association known as The Democratic Party, hereinafter referred to as the "Democratic Party", or as one (respectively) of the "parties", and that political party association known as The Republican Party, hereinafter referred to as the "Republican Party", or as one (respectively) of the "parties", are each associations of persons existing respectively as one of two political parties in the United States, that are now, and have in the entire history of The United States, always been, so politically powerful as to be usually the only parites by which successful United States Presidential and Vice Presidential candidates have been nominated.

II

At times wherein have occurred all facts hereinafter alleged, plaintiff has been, and is now, a citizen of The United States and of the State of California, and effectively (and duly registered as) a member of one of the parties.

III

Candidates for the office of President of The United States, nominated by the Democratic Party and the Republican Party, have been in the past, and threaten to be in the future, nominated under party rules condoned, encouraged, and implemented under color of the law of The State of California, which party rules and state law have in the past and threaten in the future, to deprive plaintiff and other citizens of The State of California of

the privilege of equal protection of the laws as secured by the Constitution of the United States (Amendment XIV, Section 1). Said denial of equal protection of the laws exists in that the respective party nominee for the office of President of The United States, has been, and threatens in the future to be nominated by said parties, in such a manner as to make the vote of plaintiff and other citizens of the State of California in the choice of such nominee, less effective than the votes of certain other such citizens, both such groups of citizens being effectively members of the same party.

COUNT TWO

Plaintiff alleges:

I

That political party association known as The Democratic Party, hereinafter referred to as the "Democratic Party", or as one (respectively) of the "parties", and that political party association known as The Republican Party, hereinafter referred to as the "Republican Party", or as one (respectively) of the "parties", are each associations of persons existing respectively as one of two political parties in the United States, that are now, and have in the entire history of The United States, always been, so politically powerful as to be usually the only parties by which successful United States Presidential and Vice Presidential candidates have been nominated.

II

At times wherein have occurred all facts hereinafter alleged, plaintiff has been and is now, a citizen of the United States, and effectively (and duly registered as) a member of one of the parties.

III

Candidates for the office of President of the United States, nominated by the Democratic Party and the Republican Party, have in the past, and threaten to be in the future, nominated under party rules condoned, encouraged, and implemented under color of the law of each of several States, which party rules and state laws have in the past and threaten in the future, to deprive plaintiff and other citizens of the United States of the privilege of equal protection of the laws as secured by the Constitution of The United States (Amendment V, Due Process Clause). Said denial of equal protection of the laws under color of state law, exists in that the respective party nominee for the office of President of The United States as printed on the official election ballot of each such respective state, has been, and threatens in the future to be nominated by said parties, in such a manner as to make the vote of plaintiff and other citizens of The United States in the choice of such nominee, less effective than the votes of certain other such citizens, both such groups of citizens being effectively members of the same party.

COUNT THREE

Plaintiff alleges:

I.

That political party association known as The Democratic Party, hereinafter referred to as the "Democratic Party", or as one (respectively) of the "parties", and that political party association known as The Republican Party, hereinafter referred to as the "Republican Party", or as one (respectively) of the "parties", are each associations of persons existing respectively as one of two political parties in the United States, that

are now, and have in the entire history of The United States, always been, so politically powerful as to be usually the only parties by which successful United States Presidential and Vice Presidential candidates have been nominated.

II

At times wherein have occurred all facts hereinafter alleged, plaintiff has been, and is now, a citizen of The United States and of the State of California, and effectively (and duly registered as) a member of one of the parties.

III

Defendants among themselves or with others, conspired for the purpose of depriving plaintiff and other citizens of the State of California of the equal protection of the laws, as required by Amendment XIV, section 1, of the United States Constitution. Such conspiracy was for said purpose in that it was to devote organizational personal effort and party facilities and finances to attempts to effect the election to the office of President of The United States, of persons (designated by such conspirators as "party nominees") who had been nominated by each respective party in such a manner as to make the vote of plaintiff and other citizens of the State of California, in the choice of such nominee, less effective than the votes of certain other such citizens, both such groups of citizens having been effectively members of the same party.

IV

Defendants (or some of them) in furtherance of the object of such conspiracy, devoted or caused to be

devoted organizational personal effort and party facilities and finances to attempts to effect the election to the office of President of The United States of persons (designated by such conspirators as "party nominees") who had been nominated by each respective party in such a manner as to make the vote of plaintiff and other citizens of the State of California in the choice of such nominee, less effective than the votes of certain other such citizens, where both such groups of citizens were effectively members of the same party.

V

By such act or acts as described in paragraph IV hereof, plaintiff and others were injured in person and property, and were deprived of having and exercising a right or privilege of a citizen of the United States, all as such injury and deprivation are provided for under An Act of Congress providing for the protection of civil rights, to wit, that Act, codified partially under Title 42 U.S.C. Section 1985 (3).

VI

Defendants threaten that the injury and deprivation described in paragraph V hereof, will be a continuing and repetitious injury and deprivation.

COUNT FOUR

Plaintiff alleges:

I

That political party association known as The Democratic Party, hereinafter referred to as the "Democratic Party", or as one (respectively) of the "parties", and that political party associa-

tion known as The Republican Party, hereinafter referred to as the "Republican Party", or as one (respectively) of the "parties", are each associations of persons existing respectively as one of two political parties in the United States; that are now, and have in the entire history of The United States, always been, so politically powerful as to be usually the only parties by which successful United States Presidential and Vice Presidential candidates have been nominated.

II

At times wherein have occurred all facts hereinafter alleged, plaintiff has been, and is now a citizen of the United States, and effectively (and duly registered as) a member of one of the parties.

III

Defendants among themselves or with others, conspired for the purpose of depriving plaintiff and other citizens of The United States of the equal protection of the laws, as required by Amendment V (Due Process Clause) of the United States Constitution. Such conspiracy was for said purpose in that it was to devote organizational personal effort and party facilities and finances to attempts to effect the election to the office of President of The United States, of persons (designated by such conspirators as "party nominees") who had been nominated by each respective party in such a manner as to make the vote of plaintiff and other citizens of the United States, in the choice of such nominee, less effective than the votes of certain other such citizens, both such groups of citizens having been effectively members of the same party.

IV.

Defendants (or some of them) in furtherance of the object of such conspiracy, devoted or caused to be devoted organizational personal effort and party facilities and finances to attempts to effect the election to the office of President of The United States of persons (designated by such conspirators as "party nominees") who had been nominated by each respective party in such a manner as to make the vote of plaintiff and other citizens of The United States in the choice of such nominee, less effective than the votes of certain other such citizens, where both such groups of citizens were effectively members of the same party.

V

By such act or acts as described in paragraph IV hereof, plaintiff and others were injured in person and property, and were deprived of having and exercising a right or privilege of a citizen of The United States, all as such injury and deprivation are provided for under an Act of Congress providing for the protection of civil rights, to wit, that Act, codified partially under Title 42 U.S.C. Section 1985 (3).

VI

Defendants threaten that the injury and deprivation described in paragraph V hereof, will be a continuing and repetitious injury and deprivation.

WHEREFORE PLAINTIFF PRAYS that defendants be enjoined, in the respective choice of party nominee for the office of President of The United States, from officially recognizing, or supporting the official recognition of, or acting as, any dele-

gate in the process of such party choice, who shall not be bound to vote exclusively for a prospective party nominee who, of the candidates running in said process, will have received within the previous year, in State popular elections for preference of party nominee for said office, the greatest number of votes cast by citizens of all states who are registered members exclusively of such respective party.

PLAINTIFF FURTHER PRAYS that it be declared that the election to the office of President of The United States of any person nominated by either the Democratic Party or the Republican Party in a manner not in compliance with the above first prayer, shall be null and void.

PLAINTIFF FURTHER PRAYS for such damages and other relief as court deems proper.

Alan R. Marks, Plaintiff

X

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALAN R. MARKS,

Plaintiff,

vs.

THE DEMOCRATIC PARTY OF THE UNITED STATES, et al,.

Defendants.

Civil Action No. 71-1139-LHB

ORDER DISMISSING ACTION

The Defendants Stephen Reinhardt, Carmen Warschaw, and Charles Manatt having moved the Court for an order dismissing the action (a) for failure of the Complaint to state a claim , (b) for lack of jurisdiction over the subject matter, and (c) for failure to join proper parties under Rule 19; and, in the alternative, (d) for a more definite statement; the matter came before this Court for hearing on August 20, 1971. Plaintiff appeared in Propria persona and said defendants appeared by their counsel M. Lawrence Popofsky and Paul M. Posner.

Arguments both oral and written have been

presented and considered by the Court, the Court finds that the Complaint fails to state a claim, that the Court lacked jurisdiction of the subject matter, and that there has been a failure to join proper parties under Rule 19. Based upon each of said grounds, the Court ordered that the Complaint be dismissed but granted plaintiff leave to file an amended complaint.

However, plaintiff having stated in open Court on the record that he desired to stand on the present Complaint and did not want to file an amended complaint,

IT IS ORDERED that defendants' motion be granted for each and all of the grounds stated therein and that the action be dismissed with prejudice against all defendants.

Dated: August 25, 1971.

Lloyd H. Burke,
United States District Judge.